IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 01.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Writ Appeal No.633 of 2006
and
W.A.M.P. No.1288 of 2006

1. K.Sp.V.Shanmugham
2. S.Harshavardhan
3. S.Unnamalai
4. S.Vishnuvardhan ... Appellants/Respondents in WP NO. 14577/99

vs.

1. M/s.Alwarpet Benefit Fund Ltd.,
Rep. by its Commissioner
Mr.Justice S.Padmanabhan (Retired)
(High Court Judge, Madras),
36, C.P.Ramasamy Road,
Alwarpet,
Chennai 600 028.

2. D.L.Madhusudhan

3. P.Haridas
(R-2 & R-3 impleaded vide order
dt.30.6.06 in WAMP Nos.1509,
1510 & 1532 of 2006) ... Respondents/First Petitioner in WP NO. 14577/99 and nil WP

Appeal under Clause 15 of the Letters Patent against the order of the learned single Judge, dated 17.02.2006, made in WPMP No.2722 of 2005 in W.P. No.14577 of 1999. filed under Article 226 of the Constitution of India to issue a writ of Mandamus directing the First Respondent to appoint a fit and proper person as condition as Special Officer for taking immediate control and possession of all the assets and properties both movable and immovable and securities and pay the depositors their original due.

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For Appellants : Mr.AR.L.Sundaresan,
Senior Counsel for
Ms.A.L.Gandhimathi.

For Respondent-1 : Mr.R.Krishnamurthi,
Senior Counsel for
Mr.R.Bharath Kumar.

For Respondent-2 : Mr.R.S.Raveendhran

For Respondent-3 : Mr.T.R.Rajagopalan,
Senior Counsel for
Mr.T.R.Rajaraman.

J U D G M E N T

P.SATHASIVAM, J.

By consent of all the parties, the Writ Appeal itself is taken up for disposal.

2. Aggrieved by the Order, dated 17.02.2006, of the learned single Judge, made in WPMP No.2722 of 2005 in W.P. No.14577 of 1999, the appellants have filed the above appeal.

3. Heard Mr.AR.L.Sundaresan, learned Senior counsel for the appellants; Mr.R.Krishnamurthi, learned Senior Counsel for R-1; Mr.R.S.Raveendhran, learned counsel for R-2; and Mr.T.R.Rajagopalan, learned Senior Counsel for R-3.

4. One of the depositors of M/s.Alwarpet Benefit Fund Limited approached this Court by way of Writ Petition, viz., W.P. No.14577 of 1999, seeking for the issuance of a mandamus, directing the first respondent therein, ie., M/s.Reserve Bank of India, to appoint a fit and proper person as custodian/Special Officer for taking immediate control and possession of all the assets, properties, movables and immovables, and securities belonging to M/s.Alwarpet Benefit Fund Limited and pay the depositors their original due. By order dated 13.10.1999 read with the amended order dated 26.10.1999 passed in W.P. Nos.14577/99 etc. Batch, a learned single Judge appointed Justice S.Padmanabhan, retired Judge of this Court, as Commissioner and Thiru.T.Venkatachalam, Retired General Manager of T.N.S.C. Bank as Joint Commissioner. Both the

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Commissioner and the Joint Commissioner took charge on 26.10.1999 and from that date onwards, they are administering M/s.Alwarpet Benefit Fund Limited.

The Commissioner, pursuant to the orders of this Court, had sold certain properties including the personal properties of the appellants. Though the order granting permission to sell the properties was challenged by way of Appeal, the fact remains, the said order was confirmed by the Division Bench as well as the Supreme Court. In order to mobilise funds, the Commissioner filed further application for permission to sell five items of properties and permission was granted in WPMP No.2722 of 2005 by order dated 05.01.2006. In the same order, the learned single Judge directed the Commissioner to make publication in one Tamil Daily and one English Daily having circulation at Madras for the auction to be held on 08.02.2006 and thereafter by order dated 17.02.2006 approved the sale with regard to the said five items of properties. Questioning the said order, particularly the approval order dated 17.02.2006, the appellants have filed the present Appeal.

5. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the appellants, mainly contended that the properties in respect of which permission has been sought for are not the properties of the Company as there has been no adjudication by any Court, Forum or Authority to the effect that they are the properties of the Company or that they had been acquired with the funds of the Company, hence, the permission granted on 08.02.2006 and the approval order dated 17.02.2006 cannot be sustained. According to him, the earlier writ petition, filed for appointment of Commissioner, itself is not maintainable. There is no order of winding up of the company; the company is not in liquidation; and there is no adjudication with regard to any act of misfeasance or malfeasance as against the appellants. He also contended that the learned Judge ought not to have entertained the application for sale of properties.

6. Mr.R.Krishnamurthi, learned Senior Counsel for the first respondent/Commissioner, took us through the orders passed by this Court in various bail applications, writ miscellaneous petitions, writ petitions etc., and contended that it is not open for the the appellants to raise all these objections at this stage.

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7. Though an order was passed as early as on 13.10.1999 and 26.10.1999; appointing the Hon'ble Mr. Justice S.Padmanabhan, Retired Judge of this Court, as Commissioner, and Thiru.T.Venkatachalam, Retired General Manager of TNSC Bank as Joint Commissioner, and they also took charge as early as on 26.10.1999; admittedly, the said Order has not been challenged all these years. Even now, the appellants have not challenged the said order and it is not open for them to challenge the same at this juncture.

8. It is relevant to point out that, while appointing the Commissioner, this Court permitted him to mobilise funds so as to enable him to meet the liabilities of the Benefit Fund towards the depositors even by selling the immovable properties of M/s.Alwarpet Benefit Fund Limited in consultation with its Directors. The Commissioner has filed an affidavit stating that the appellants herein have not co-operated with him in selling the immovable properties.

9. The following factual details, which are available in the Paper-Book filed by the first respondent-Commissioner are relevant,

On 3.12.1999, appellants 1 and 2 herein, viz., Ex. Managing Director and Ex. Director of M/s.Alwarpet Benefit Fund Limited, were arrested and remanded to judicial custody for committing offences like cheating and misappropriation of the funds of Alwarpet Benefit Fund Limited running into several crores of Rupees. They filed Crl.O.P. No.1108 of 2000 before this Court for enlarging them on bail and bail was granted on the condition that they should pay a sum of Rs.10 Crores to the Commissioner appointed by the Court, fixing the time schedule. They had to deposit Rs.4 Crores on or before 29.02.2000 and they had also filed an affidavit to that effect. However, they did not comply with the conditions, but, filed Crl.M.P. No.1232 of 2000 to modify the earliest order dated 31.01.2000 passed in Cr.M.P. No.1108 of 2000 and this Court, by order dated 20.03.2000, modified the said order and directed them to pay Rs.3 cores at the first instance on or before 15.04.2000 and the balance thereafter. Aggrieved by the said order, they filed S.L.P. (Criminal) Nos.1497 and 1498 of 2000 before the Hon'ble Supreme Court and the said petitions were dismissed on 25.09.2000. Even after dismissal of the SLPs, appellants-1 and 2 are evading arrest and they have not surrendered before the Court or

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the Investigating Officer.

It is also relevant to point out that in Cr.M.P. No.1232 of 2000 in Crl.O.P. No.1108 of 2000, filed by appellants-1 and 2 against the Inspector of Police, Central Crime Branch, Egmore, Chennai, a learned Judge, by recording the contention of the learned counsel for appellants-1 and 2 that they could not identify the purchasers for the sale of 5 items of properties movable and immovable, granted time till 15.04.2000 for depositing Rs.3 Crores. In fact, in the petition, they themselves prayed for sale of their personal properties. Pursuant to the same, the learned Judge permitted them to sell their personal properties enabling them to pay the instalments as per the order dated 31.01.2000 made in Crl.O.P. No.1108 of 2000.

10. As rightly pointed out by Mr.R.Krishnamurthi, learned Senior Counsel for the first respondent, appellants-1 and 2 herein, without complying with the condition imposed on them by order dated 20.03.2000 in Cr.M.P. No.1232 of 2000, filed Cr.M.P. No.7395 of 2002 before this Court for modification of the earlier order. By order dated 02.11.2000, another learned Judge dismissed Cr.M.P. No.7395 of 2000 and directed the Commissioner of Police, Chennai, to arrest them immediately. However, the Commissioner of Police, Chennai, was not able to arrest them as they were evading arrest. At the instance of Economic Offences Wing-II, Chennai, the Additional Chief Metropolitan Magistrate, Egmore, Chennai, by his 3 orders dated 15.04.2004, proclaimed that K.SPV.Shanmugam Chettiar, Son of Vinaithirthan Chettiar; Unnamalai, Wife of K.SPV.Shanmugam; and Harshavardhan, son of K.SPV.Shanmugam should appear before the said court on 27.05.2004. In the petition filed before the said Court, the Deputy Superintendent of Police, Economic Offences Wing-II, Chennai, has stated that accused 1 to 4, against whom warrants had been issued, have been absconding, hence, such warrants could not be executed.

11. The above details amply show that they have not complied with the conditional order passed at the time of grant of bail and they had gone to the extent of permitting themselves for sale of their personal properties. The fact remains, the conditional orders have not been complied with and, added to it, all the appellants are absconding. Though in the affidavit filed in support of the said petition, it is shown as if they are residing at No.194, St.Marys Road, Abhiramapupram, Chennai, the said affidavit of S.Harshavardhan/2nd appellant herein was

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executed only at Bangalore on 15.04.2006, which was attested by an Advocate at Bangalore. This shows they are not within the jurisdiction of the concerned court and, in order to avoid action being taken, they get shifted from one place to another. In such circumstances and in view of their conduct, their claim cannot be accepted. For the same reason, the claim of Mr.AR.L.Sundaresan, learned senior Counsel for the appellants that the matter has to be agitated before appropriate court or company court is unacceptable.

12. It is seen that, pursuant to the direction of this Court, the Commissioner made proper advertisement both in Dina Malar and Hindu on 11.01.2006 and pursuant to the same, the learned Judge, by order dated 17.02.2006 approved the action of the Commissioner and issued appropriate direction for completion of the sale proceedings including execution of sale deeds in favour of the successful bidders. We do not find any error or infirmity for interference.

13. Before parting with the case, it is our duty to point out that the information furnished in the form of affidavit, which is culled out from the Special Audit Report, shows that the appellants have diverted funds from Alwarpet Benefit Fund and various properties were acquired with those funds, in such circumstances, now, it is not open for them to contend that Alwarpet Benefit Fund Limited is not entitled to sell those properties. We are satisfied that the properties in dispute were sold only as per the orders of this Court and in a manner known to law. We are also satisfied that the auction sale conducted by this Court is in accordance with law and the Commissioner, who is none else than a retired Hon'ble Judge of this Court, has specifically stated that highest and best price has been obtained for the properties. According to him, the purchasers are bonafide purchasers for valid sale consideration.

14. Illustrations are numerous and stand as live evidence that most of the Financial Establishments, be they called in whatever name, with their honey-coated advertisements and pompous offers, emerged as if they sprouted only to enrich the common masses with big bonanza, but, in course of time, they started competing with each other in devouring the investments of the depositors, who lost their precious savings to these white-collar offenders. The pathetic position is, among those who fell prey to their deceitful tactics, some have lost their hope in seeing the colour of the coin while others are wandering

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in their hopeless attempt to get back their sum earned with much difficulty.

Any how, Courts cannot turn a blind eye and remain to be silent spectator to this innovative type of plunder, more so in a case where the responsible persons or their assets are at an accessible vicinity to the hands of law, whereby, the court can, by ordering sale of such assets, alleviate the asperity of the affected parties to the possible extent.

The appellants herein have set an example by escaping arrest to avoid subjecting themselves to legal liability. To come out on bail, they went to the extent of filing an undertaking affidavit to deposit Rs.4 crores and even sought the permission of the court to touch the personal properties. As soon as they came out, they again started their foul play and were successful in being away from the clutches of law. Acceding to the request of people of this nature, undoubtedly, would set a bad trend.

While recording our deep appreciation for the efforts taken by the Commissioner, we add that the Commissioner may work out the ways and means to mobilise more funds by taking all stringent steps and also through all possible means within his domain to make good the loss of the depositors with the available stock to the maximum extent as expeditiously as possible, so that the ultimate objectives could be achieved at least in near future.

15. With the above observation, the Writ Appeal is dismissed. No costs. Connected Miscellaneous Petition is closed.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. Mr.Justice S.Padmanabhan,
Retired High Court Judge,
Commissioner, M/s.Alwarpet Benefit Fund Ltd.,
36, C.P.Ramasamy Road, Alwarpet, Chennai 600 028.

2. The Reserve Bank of India,
Constituted under the RBI Act 1934
having its Regional Office at
Rajaji Salai, Chennai - 1.

3. The Secretary,
Ministry of Law and Company Affairs,
Government of India
Shastri Bhavan, New Delhi.

4. The Regional Director,
Southern Region,
Department of Company Affairs,
Government of India, Shastri Bhavan
Block No. 1, Vth Floor, 26 Haddows Road,
Chennai - 6.

5. The Secretary, Ministry of Finance
North Block, New Delhi.

6. The Regional Director,
The Company Law Board,
Southern Regional Bench,
Shastri Bhavan, Chennai

+ one cc to Mr. A.L. Gandhimathi, Advocate sr no. 39910
+ one cc to Mr. R.S. Raveendhran, Advocate sr no. 39819
+ one cc to Mr. R. Bharath Kumar, Advocate sr no. 39890

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